

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

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CHAPTER 198

SENATE BILL 1441

AN ACT

AMENDING SECTIONS 8-113, 8-533, 8-824, 8-829, 8-847 AND 8-862, ARIZONA
REVISED STATUTES; RELATING TO DEPENDENT CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 8-113, Arizona Revised Statutes, is amended to
3 read:
4 8-113. Removal from home; expedited hearings; probationary
5 period
6 A. A child who has been placed in a certified adoptive home by any
7 agency or the division shall not be removed from the home except on order of
8 the juvenile court. The agency or the division may request a hearing for
9 removal before the juvenile court, and in those cases, a hearing shall be
10 held not less than ten days after notice has been given to the certified
11 prospective adoptive parent or parents.
12 B. This section does not prohibit prospective adoptive parents from
13 voluntarily returning any child to the placing agency or the division or does
14 not prevent the removal of a child pursuant to section 8-821 or 8-802.
15 C. Pending the final adoption hearing, the child is subject to further
16 investigation by the division, an officer of the court or an agency that is
17 required to do the social study pursuant to section 8-105.
18 D. The court shall hold the hearing on the petition:
19 1. Within sixty days if the child has resided in the home of the
20 prospective adoptive parent or parents for at least one year immediately
21 preceding the filing of the petition for adoption. If the prospective
22 adoptive parent is the stepparent of the child, this requirement applies only
23 if the stepparent has been married to the birth or legal parent of the child
24 for at least one year.
25 2. Within ninety days if the child is under ~~six months~~ THREE YEARS of
26 age or has resided in the home of the prospective adoptive parent or parents
27 for at least six months preceding the filing of the petition for adoption.
28 If the prospective adoptive parent is the stepparent of the child, this
29 requirement applies only if the stepparent has been married to the birth or
30 legal parent of the child for at least one year.
31 3. In all other cases, within six months after the filing of the
32 petition for adoption.
33 E. If subsection D, paragraph 1 or 2 of this section applies, the
34 petitioner shall file a notification of that fact with the petition to adopt.
35 F. The court shall postpone a hearing scheduled to be held pursuant to
36 subsection D of this section if the court has not received the results of the
37 criminal records check at least forty-eight hours before the final hearing.
38 The court shall reschedule the hearing within twenty-one days after receiving
39 the results.
40 G. The court or the petitioner may postpone the final hearing up to
41 sixty days in order to give notice to any interested party or for other good
42 cause.
43 H. The court shall hold an expedited hearing on a motion that is
44 supported by a sworn affidavit that the expedited hearing is in the child's
45 best interests and that any of the following is true:

1 1. The child is suffering from a chronically debilitating, progressive
2 or fatal disease as diagnosed by a licensed physician.

3 2. A prospective adoptive parent, ~~natural~~ BIRTH parent or legal parent
4 is terminally ill, as diagnosed by a licensed physician.

5 3. The court finds other compelling reasons relating to the special
6 needs and welfare of the child to expedite the hearing.

7 I. During the probationary period or any extension, prospective
8 adoptive parents who have complied with the provisions of this chapter have
9 the following rights and responsibilities with respect to the child:

10 1. The right to physical custody of the child unless the child is
11 removed by order of the juvenile court after notice and a hearing.

12 2. The right to consent to necessary medical procedures for the child.

13 3. The right to consent to participation in social and athletic
14 activities for the child.

15 4. The responsibility to provide proper care and support for the child
16 in addition to that already provided by the placing agency or division.

17 Sec. 2. Section 8-533, Arizona Revised Statutes, is amended to read:

18 8-533. Petition; who may file; grounds

19 A. Any person or agency that has a legitimate interest in the welfare
20 of a child, including, but not limited to, a relative, a foster parent, a
21 physician, the department of economic security or a private licensed child
22 welfare agency, may file a petition for the termination of the parent-child
23 relationship alleging grounds contained in subsection B of this section.

24 B. Evidence sufficient to justify the termination of the parent-child
25 relationship shall include any one of the following, and in considering any
26 of the following grounds, the court shall also consider the best interests of
27 the child:

28 1. That the parent has abandoned the child.

29 2. That the parent has neglected or wilfully abused a child. This
30 abuse includes serious physical or emotional injury or situations in which
31 the parent knew or reasonably should have known that a person was abusing or
32 neglecting a child.

33 3. That the parent is unable to discharge parental responsibilities
34 because of mental illness, mental deficiency or a history of chronic abuse of
35 dangerous drugs, controlled substances or alcohol and there are reasonable
36 grounds to believe that the condition will continue for a prolonged
37 indeterminate period.

38 4. That the parent is deprived of civil liberties due to the
39 conviction of a felony if the felony of which that parent was convicted is of
40 such nature as to prove the unfitness of that parent to have future custody
41 and control of the child, including murder of another child of the parent,
42 manslaughter of another child of the parent or aiding or abetting or
43 attempting, conspiring or soliciting to commit murder or manslaughter of
44 another child of the parent, or if the sentence of that parent is of such

length that the child will be deprived of a normal home for a period of years.

5. That the potential father failed to file a paternity action within thirty days of completion of service of notice as prescribed in section 8-106, subsection G.

6. That the putative father failed to file a notice of claim of paternity as prescribed in section 8-106.01.

7. That the parents have relinquished their rights to a child to an agency or have consented to the adoption.

8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that either ONE of the following circumstances exists:

(a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order or voluntary placement pursuant to section 8-806 and the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.

(b) THE CHILD WHO IS UNDER THREE YEARS OF AGE HAS BEEN IN AN OUT-OF-HOME PLACEMENT FOR A CUMULATIVE TOTAL PERIOD OF SIX MONTHS OR LONGER PURSUANT TO COURT ORDER AND THE PARENT HAS SUBSTANTIALLY NEGLECTED OR WILFULLY REFUSED TO REMEDY THE CIRCUMSTANCES THAT CAUSE THE CHILD TO BE IN AN OUT-OF-HOME PLACEMENT, INCLUDING REFUSAL TO PARTICIPATE IN REUNIFICATION SERVICES OFFERED BY THE DEPARTMENT.

~~(b)~~ (c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to section 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

9. That the identity of the parent is unknown and continues to be unknown following three months of diligent efforts to identify and locate the parent.

10. That the parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.

11. That all of the following are true:

(a) The child was cared for in an out-of-home placement pursuant to court order.

(b) The agency responsible for the care of the child made diligent efforts to provide appropriate reunification services.

(c) The child, pursuant to court order, was returned to the legal custody of the parent from whom the child had been removed.

1 (d) Within eighteen months after the child was returned, pursuant to
2 court order, the child was removed from that parent's legal custody, the
3 child is being cared for in an out-of-home placement under the supervision of
4 the juvenile court, the division or a licensed child welfare agency and the
5 parent is currently unable to discharge parental responsibilities.

6 C. Evidence considered by the court pursuant to subsection B of this
7 section shall include any substantiated allegations of abuse or neglect
8 committed in another jurisdiction.

9 D. In considering the grounds for termination prescribed in subsection
10 B, paragraph 8 or 11 of this section, the court shall consider the
11 availability of reunification services to the parent and the participation of
12 the parent in these services.

13 E. In considering the grounds for termination prescribed in subsection
14 B, paragraph 8 of this section, the court shall not consider the first sixty
15 days of the initial out-of-home placement pursuant to section 8-806 in the
16 cumulative total period.

17 Sec. 3. Section 8-824, Arizona Revised Statutes, is amended to read:

18 8-824. Preliminary protective hearing; probable cause;
19 appointment of counsel

20 A. The court shall hold a preliminary protective hearing to review the
21 taking into temporary custody of a child pursuant to section 8-821 not fewer
22 than five days nor more than seven days after the child is taken into
23 custody, excluding Saturdays, Sundays and holidays. If clearly necessary to
24 prevent abuse or neglect, to preserve the rights of a party or for other good
25 cause shown, the court may grant one continuance that does not exceed five
26 days.

27 B. The following persons shall be present at the preliminary
28 protective hearing:

29 1. The child's parents or guardian, unless they cannot be located or
30 they fail to appear in response to the notice.

31 2. Counsel for the parents if one has been requested or retained.

32 3. The child's guardian ad litem or attorney.

33 4. The protective services worker.

34 5. Counsel for the protective services worker.

35 C. If the court finds that it is in the best interests of the child,
36 the court may allow the following to be present at the preliminary protective
37 hearing:

38 1. The child.

39 2. Any relative or other interested person with whom the child is or
40 might be placed as described in section 8-845, subsection A.

41 3. Witnesses called by the parties.

42 4. An advocate or interested person as requested by the parent or
43 guardian.

44 5. Other persons who have knowledge of or an interest in the welfare
45 of the child.

1 D. At the hearing, the court shall advise the parent or guardian of
2 the following rights:

3 1. The right to counsel, including appointed counsel if the parent or
4 guardian is indigent.

5 2. The right to cross-examine all witnesses who are called to testify
6 against the parent or guardian.

7 3. The right to trial by court on the allegations in the petition.

8 4. The right to use the process of the court to compel the attendance
9 of witnesses.

10 E. At the hearing, the court:

11 1. Shall receive a report of any agreement reached pursuant to section
12 8-823, subsection D. The report may be made orally.

13 2. Shall provide an opportunity for the child's parent or guardian, if
14 present, and any other person who has relevant knowledge, to provide relevant
15 testimony.

16 3. May limit testimony and evidence that is beyond the scope of the
17 removal of the child, the child's need for continued protection, placement,
18 visitation and services to be provided to the child and family.

19 4. May take into consideration as a mitigating factor the
20 participation of the parent or guardian in the healthy families program
21 established by section 8-701.

22 5. Shall take into consideration as a mitigating factor the
23 availability of reasonable services to the parent or guardian to prevent or
24 eliminate the need for removal of the child and the effort of the parent or
25 guardian to obtain and participate in these services.

26 6. Shall inform the child's parent or guardian that the hearing may
27 result in further proceedings to terminate parental rights.

28 7. SHALL INFORM THE PARENT THAT SUBSTANTIALLY NEGLECTING OR WILFULLY
29 REFUSING TO REMEDY THE CIRCUMSTANCES THAT CAUSE THE CHILD TO BE IN AN
30 OUT-OF-HOME PLACEMENT, INCLUDING REFUSING TO PARTICIPATE IN REUNIFICATION
31 SERVICES, IS GROUNDS FOR TERMINATION OF PARENTAL RIGHTS TO A CHILD.

32 ~~7.~~ 8. Shall give paramount consideration to the health and safety of
33 the child.

34 ~~8.~~ 9. Shall review evidence that the department is attempting to
35 identify and assess placement of the child with a grandparent or another
36 member of the child's extended family including a person who has a
37 significant relationship with the child.

38 10. SHALL INFORM A FOSTER PARENT, PRE-ADOPTIVE PARENT OR A MEMBER OF
39 THE CHILD'S EXTENDED FAMILY WITH WHOM THE DEPARTMENT HAS PLACED THE CHILD OF
40 THE RIGHT TO BE HEARD IN ANY PROCEEDING TO BE HELD WITH RESPECT TO THE CHILD.

1 F. The petitioner has the burden of presenting evidence as to whether
2 there is probable cause to believe that continued temporary custody is
3 clearly necessary to prevent abuse or neglect pending the hearing on the
4 dependency petition.

5 G. If the child is in the temporary custody of the department, the
6 department shall submit not later than the day before the hearing a written
7 report to the court and the parties that states:

8 1. The reasons the child was removed from the parent's or guardian's
9 custody.

10 2. Any services that have been provided to the child or the child's
11 parent or guardian to prevent removal.

12 3. The need, if any, for continued temporary custody.

13 4. The types of service needed to facilitate the return of the child
14 to the custody of the child's parents or guardian.

15 5. If the child is not placed with a grandparent, whether the child
16 has any relatives or other interested parties as described in section 8-845,
17 subsection A who may be able and willing to take temporary custody.

18 6. Any services that are requested by the parent or guardian but that
19 are not provided and the reasons the services were not provided.

20 7. Any efforts made to place siblings together, and if they are not
21 placed together, the reasons why.

22 8. Any efforts made to facilitate communications among siblings.

23 9. A proposal for visitation and the results of any visitation that
24 has occurred since the child was removed.

25 10. A proposed case plan for services to the family.

26 H. The parent or guardian shall state whether the parent or guardian
27 admits or denies the allegations in the petition filed pursuant to section
28 8-841. If the parent or guardian admits or does not contest the allegations
29 in the petition, the court shall determine that the parent or guardian
30 understands the rights described in subsection D of this section and that the
31 parent or guardian knowingly, intelligently and voluntarily waives these
32 rights.

33 I. At the hearing, if the child is not returned to the parent or
34 guardian, the court shall:

35 1. Enter orders regarding the placement of the child pending the
36 determination of the dependency petition and visitation, if any. ~~The court~~
37 ~~shall also~~

38 2. IF A RELATIVE IS IDENTIFIED AS A POSSIBLE PLACEMENT FOR THE CHILD,
39 NOTIFY THE RELATIVE OF THE RIGHT TO BE HEARD IN ANY PROCEEDING TO BE HELD
40 WITH RESPECT TO THE CHILD.

41 3. Determine if the tasks and services set forth in the case plan are
42 reasonable and necessary to carry out the case plan.

1 Sec. 4. Section 8-829, Arizona Revised Statutes, is amended to read:
2 8-829. Judicial determinations; timing; documentation

3 A. If a child has been removed from the child's home, the court shall
4 make protecting the child from abuse or neglect the first priority and shall
5 make the following determinations within the following time periods:

6 1. In the court's first order that sanctions the removal, whether
7 continuation of the child's residence in the home would be contrary to the
8 welfare of the child. This order may be the temporary order that the court
9 issues on the filing of a dependency petition.

10 2. At the preliminary protective hearing, whether the department made
11 attempts to identify and assess placement with the child's grandparent or
12 another member of the child's extended family including a person who has a
13 significant relationship with the child.

14 3. Within sixty days after the child is removed from the child's home,
15 whether reasonable efforts have been made to prevent removal of the child or
16 whether it was reasonable to make no efforts to prevent removal of the child.

17 4. If the child is not placed with a grandparent or another member of
18 the child's extended family including a person who has a significant
19 relationship with the child within sixty days after the child is removed from
20 the child's home, why such placement is not in the best interests of the
21 child. The petitioner has the burden of presenting evidence that such
22 placement is not in the child's best interests at the first court hearing
23 thereafter.

24 5. Within twelve months after the child is removed from the child's
25 home and once every twelve months thereafter, whether reasonable efforts have
26 been made to finalize the existing permanency plan.

27 6. IF THE CHILD IS UNDER THREE YEARS OF AGE, WITHIN SIX MONTHS AFTER
28 THE CHILD IS REMOVED FROM THE CHILD'S HOME, WHETHER REASONABLE EFFORTS HAVE
29 BEEN MADE TO PROVIDE REUNIFICATION SERVICES TO THE PARENT AND WHETHER A
30 PARENT OF A CHILD WHO IS UNDER THREE YEARS OF AGE HAS SUBSTANTIALLY NEGLECTED
31 OR WILFULLY REFUSED TO PARTICIPATE IN REUNIFICATION SERVICES OFFERED BY THE
32 DEPARTMENT.

33 B. The court shall make each determination described in subsection A
34 on a case-by-case basis and shall set forth in its written order the specific
35 factual basis for each determination. In making its determination, the court
36 shall consider documentation that is reasonably available at the time of the
37 determination.

38 Sec. 5. Section 8-847, Arizona Revised Statutes, is amended to read:
39 8-847. Periodic review hearings

40 A. After the disposition hearing, the court shall hold periodic review
41 hearings at least once every six months as required by federal law.

42 B. At a proceeding to review the disposition orders of the court, the
43 court shall provide the following persons notice of the review and the right
44 to participate in the proceeding:

45 1. The authorized agency charged with the child's care and custody.

2. Any foster parents in whose home the child resided within the last six months or resides at present, except for those foster parents who maintain a receiving foster home where the child has resided for thirty days or less. The petitioner shall provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.

3. A shelter care facility or receiving foster home where the child resides or has resided within the last six months for more than thirty days. The petitioner shall provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.

4. The child's parent or guardian unless the parental rights of that parent or guardian have been terminated by court action or unless the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in section 8-107.

5. The child, if twelve years of age or older.

6. The child's relative, as defined in section 8-501, if that relative files a written notice of right of participation with the court.

7. A person permitted by the court to intervene as a party in the dependency proceeding.

8. A physical custodian of the child within the preceding six months.

9. Any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement.

10. Any other person as the court may direct.

C. AT THE FIRST PERIODIC REVIEW HEARING, THE COURT SHALL CONSIDER WHETHER A PARENT OF A CHILD WHO IS UNDER THREE YEARS OF AGE HAS SUBSTANTIALLY NEGLECTED OR WILFULLY REFUSED TO PARTICIPATE IN REUNIFICATION SERVICES OFFERED BY THE DEPARTMENT.

~~C.~~ D. At any periodic review hearing, the court shall consider the health and safety of the child as a paramount concern.

~~D.~~ E. If the court finds that a child is no longer dependent, before it dismisses the proceeding the court shall provide notice of the sibling information exchange program established pursuant to section 8-543 to the following:

1. An adult who is the former dependent child in the proceeding for whom the periodic review hearing is held.

2. A parent or guardian with legal custody of the former dependent child for whom the periodic review hearing is held.

Sec. 6. Section 8-862, Arizona Revised Statutes, is amended to read:
8-862. Permanency hearing

A. The court shall hold a permanency hearing to determine the future permanent legal status of the child:

1. Within thirty days after the disposition hearing if the court does not order reunification services.

2. WITHIN SIX MONTHS AFTER A CHILD WHO IS UNDER THREE YEARS OF AGE IS REMOVED FROM THE CHILD'S HOME. THE COURT SHALL NOT CONTINUE THAT PERMANENCY

1 HEARING BEYOND SIX MONTHS AFTER THE CHILD WHO IS UNDER THREE YEARS OF AGE IS
2 REMOVED FROM THE CHILD'S HOME UNLESS THE PARTY WHO IS SEEKING THE CONTINUANCE
3 SHOWS THAT THE DETERMINATION PRESCRIBED IN SECTION 8-829, SUBSECTION A,
4 PARAGRAPH 6 HAS BEEN MADE OR WILL BE MADE WITHIN THE TIME PRESCRIBED IN THAT
5 PARAGRAPH.

6 ~~2-~~ 3. In all other cases, within twelve months after the child is
7 removed from the child's home. The court shall not continue the permanency
8 hearing beyond twelve months after the child is removed from the child's home
9 unless the party who is seeking the continuance shows that the determination
10 prescribed in section 8-829, subsection A, paragraph 5 has been made or will
11 be made within the time prescribed in that paragraph.

12 B. At the permanency hearing, the court shall determine:

13 1. Whether termination of parental rights, adoption, permanent
14 guardianship pursuant to section 8-872 or some other permanent legal status
15 is the most appropriate plan for the child and shall order the plan to be
16 accomplished within a specified period of time.

17 2. Whether reasonable efforts have been made to finalize the
18 permanency plan in effect.

19 C. If the court determines that the child should remain in out-of-home
20 placement longer than eighteen months from the date of the permanency order,
21 the court shall conduct a review of the order at least once each year. After
22 reviewing the order, the court may reaffirm the order or direct other
23 disposition of the child.

24 D. If the court determines that the termination of parental rights is
25 clearly in the best interests of the child, the court shall:

26 1. Order the department or the child's attorney or guardian ad litem
27 to file within ten days after the permanency hearing a motion alleging one or
28 more of the grounds prescribed in section 8-533 for termination of parental
29 rights. The party who files the motion has the burden of presenting evidence
30 at the termination hearing to prove the allegations in the motion.

31 2. Set a date for an initial hearing on the motion for termination of
32 parental rights within thirty days after the permanency hearing. If the
33 termination is contested at the initial hearing, the court shall set a date
34 for the trial on termination of parental rights within ninety days after the
35 permanency hearing.

36 E. THE DEPARTMENT SHALL MAKE REASONABLE EFFORTS TO PLACE THE CHILD IN
37 A TIMELY MANNER IN ACCORDANCE WITH THE PERMANENCY PLAN AND TO COMPLETE
38 WHATEVER STEPS ARE NECESSARY TO FINALIZE THE PERMANENT PLACEMENT OF THE
39 CHILD.

40 ~~E-~~ F. If the court determines that permanent guardianship is clearly
41 in the best interests of the child, the court shall:

42 1. Order the department or the child's attorney or guardian ad litem
43 to file within ten days after the permanency hearing a motion alleging the
44 grounds prescribed in section 8-871 for permanent guardianship. The party

1 who files the motion has the burden of presenting evidence at the hearing to
2 prove the allegations in the motion.

3 2. Set a date for an initial hearing on the motion for permanent
4 guardianship within thirty days after the permanency hearing. If the
5 permanent guardianship is contested at the initial hearing, the court shall
6 set a date for the trial on the permanent guardianship within ninety days
7 after the permanency hearing.

8 F. G. Evidence considered by the court in making a decision pursuant
9 to this section also shall include any substantiated allegations of abuse or
10 neglect committed in another jurisdiction.

APPROVED BY THE GOVERNOR MAY 12, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2008.